



  
Frank W. Volk, Chief Judge  
United States Bankruptcy Court  
Southern District of West Virginia

**UNITED STATES BANKRUPT  
SOUTHERN DISTRICT OF WES**

**AT CHARLESTON**

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| IN RE:<br><br>ACADEMY ANIMAL HOSPITAL, INC.,<br><br>Debtor. | CASE NO. 2:15-bk-20618<br><br>CHAPTER 11<br><br>JUDGE FRANK W. VOLK |
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**MEMORANDUM OPINION AND ORDER**

Pending is the motion to dismiss filed by the United States Trustee [Dckt. 78] (“Motion to Dismiss”). The Court **GRANTS** the Motion to Dismiss.

**I.**

The Debtor, Academy Animal Hospital, Inc. (“Academy”), petitioned for relief under Chapter 11 of the Bankruptcy Code on December 1, 2015. Academy operates a veterinary clinic in Saint Albans. This is a small business case under 11 U.S.C. §§101(51D) and 101(51C).

To reduce the delay and cost of the Chapter 11 device, Congress established carve-outs for small business debtors. Thomas E. Carlson & Jennifer Frasier Hayes, *The Small Business Provisions of the 2005 Bankruptcy Amendments*, 79 Am. Bankr. L.J. 645, 648 (2005). Those mechanisms are meant to “provide an expedited, supervised procedure in which the rights of all parties in interest are protected throughout the reorganization process.” *In re Burgos*, 510 B.R. 460, 462 (Bankr. D.P.R. May 12, 2014); *In re Sanchez*, 429 B.R. 393, 397 (Bankr. D.P.R. May 3, 2010). One benefit of filing as a small business debtor is an extended exclusivity period for filing a plan. The small business debtor -- and that debtor alone -- enjoys an absolute period of 180 days

after the date of the order for relief within which to file a plan, as opposed to the 120-day period provided to non-small business debtors. *Compare* 11 U.S.C. § 1121(e), *with* 11 U.S.C. § 1121(b).

That and other benefits, however, come at a price. There are attendant burdens borne by small business debtors, the United States Trustee, and the court alike to ensure streamlined and effective management. *See In re Sanchez*, 429 B.R. at 398. For example, the 180-day exclusivity period “may be extended only if” the three requirements of 11 U.S.C. § 1121(e) are satisfied. Included among those requirements is that “the order extending time is signed *before* the existing deadline has expired.” 11 U.S.C. § 1121(e)(3)(C) (emphasis added).

## II.

As noted, “In a small business case . . . the plan and disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief . . . .” 11 U.S.C. § 1121(e)(2). “The words ‘order for relief’ refer to the commencement of a voluntary petition for bankruptcy.” *In re Martinson*, 731 F.2d 543, 544 n.3 (8th Cir. 1984).

Academy filed its Chapter 11 petition on December 1, 2015, giving it through May 29, 2016 -- the 300th day after December 1, 2015 -- to file its plan of reorganization. That 300-day time period “may be extended *only if*—

(A) the debtor, after providing notice to parties in interest (including the United States Trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

(B) a new deadline is imposed at the time the extension is granted; and

(C) the order extending time is *signed before the existing deadline has expired.*”

11 U.S.C. § 1121(e)(3) (emphasis added). The Court has received no such plan nor any further motion seeking an extension of the September 25, 2016, extended deadline permitted by the Court

on September 25, 2016. Consequently, no further extension order has been signed prior to expiration of the extended 180-day deadline.

Congress could not have been clearer. That clarity has unsurprisingly resulted in many courts simply applying the statute as written. *See, e.g., In re Caring Heart Home Health Corp., Inc.*, 380 B.R. 908, 910-11 (Bankr. S.D. Fla. 2008) (“[T]he language of the third requirement in section 1121(e)(3) is abundantly clear and must be read as ‘conclusive’—if no signed order exists prior to the expiration of the . . . deadline, then no extension can be granted.”); *see also In re Castle Horizon Real Estate, LLC*, No. 09–05992–8–JRL, 2010 WL 3636160, at \*2 (Bankr. E.D.N.C. Sept. 10, 2010) (“if no party files a plan within 300 days, then no relief is available”); *In re Burgos*, 510 B.R. 460, 462 (Bankr. D.P.R. 2014) (“The statutorily prescribed term is effectively a ‘drop dead’ period that is calculated from the date of order for relief.”); *In re Sanchez*, 429 B.R. 393, 400 (Bankr. D.P.R. 2010) (stating that failure to file a plan within the section 1121(e)(2) deadline is cause for dismissal); *In re Sutherland*, No. 10–17768–MER, 2011 WL 2078529, at \*1–2 (Bankr. D. Colo. 2011) (stating that failure to file a plan within the 300–day deadline is grounds for dismissal); *In re Randi’s, Inc.*, 474 B.R. 783, 786 (Bankr. S.D. Ga. 2012) (“cause exists to dismiss or convert the case for the failure of any party to file a plan within the 300–day period or to timely obtain an extension”). As one judicial officer put it, “Congress could have delineated tolling events for that 300-day period. However, the fact that no such language was included allows this Court to conclude none were intended.” *In re Burgos*, 510 B.R. at 462.

### III.

Based upon the foregoing discussion, it is, accordingly, **ORDERED** that the United States Trustee’s Motion to Dismiss be, and hereby is, **GRANTED**.

The Clerk shall transmit a copy of this written opinion and order to the parties and their counsel, if any, and the United States Trustee.